

“Applying the Public Trust Doctrine in Rhode Island”

Megan Higgins,
RI Sea Grant Legal Program/Marine Affairs Institute at Roger Williams University
School of Law

Rhode Island’s public trust doctrine (PTD) is codified in Article 1, Section 17 of the state constitution. Essentially, it protects fishing, passage along the shore, swimming and navigational rights for all citizens of the state. The protected interests under the PTD, as a whole, are constantly evolving to include other rights such as recreational use of the shore and tidelands (including aquaculture), preservation and protection of habitats and tidelands, and even the right to recover damages to natural resources under federal legislation (in these cases, NOAA is identified as the trustee).

Coastal homeowners also have rights related to the PTD, such as the rights: of access, to wharf out, of a view-shed, to acquire accretions, to fill, and of continued water flow.

Ms. Higgins then explained the boundary of the PTD in RI, which includes tidal waters or any lands subject to the ebb and flow of the tides. The state uses the mean high tide line (MHTL) to delineate public resources and defines it as, “[t]he line formed by the intersection of the tidal plane of mean high tide with the shore.” The MHTL is further defined as the “arithmetic average of high water heights observed over an 18.6 year Metonic (or lunar) cycle.” Of course, determining the MHTL is problematic, as the shoreline is dynamic and continues to evolve.

In Rhode Island, the Coastal Resources Management Council holds title to resources in trust for the benefit of the public. The CRMC’s jurisdiction is determined by a 200-foot buffer from the actual public resource or coastal feature. Express consent or a legislative decree is needed to transfer title to another.

The state has an interest in public trust resources and management of such public resources is based on: need, uses, and water quality standards (covered in management plans); or, a holistic approach. Forms of consent for private uses of public resources include: easements, management agreements, permits and licenses, leases, and consent by rule. The state relies on its Coastal Resources Management Plan for guidance in balancing public versus private rights.

Recent caselaw cited included:

- Westerly v. Bradley: Bradley used the PTD to argue that he could swim a channel that was very actively fished (by commercial interests) and the town said “no” under a public safety ordinance; Bradley lost.
- Champlin’s Realty Assoc. v. Tillson: Concerning Block Island, 13 miles off the coast. The town claimed ownership to submerged lands within the Great Salt Pond, but the court ruled that even though the town had title to the land, it does not have exclusive permitting rights to those lands. The state retained its

responsibilities under the PTD and thus the Town of New Shoreham did not enjoy exclusive jurisdiction over the pond.

- Palazzolo v. State: Palazzolo wanted to develop 18 acres of salt marsh into a beach club; more than 50% of the land was submerged throughout the year. Management regulations prohibited him from filling that land and he claimed a 5th Amendment “taking,” arguing that the state was depriving him of an economic benefit from the development of his property. The state successfully used the PTD as a background principle of state law to prove that Palazzolo should have known about the regulations in place and therefore should not have held expectations about the submerged land’s economic value. The court ruled that the submerged lands were never legally his, and were always in the public trust because they were submerged 50% of the time. Other factors the court considered regarding his proposed development were: septic impacts, nuisance, water quality, and developing wetlands for a non-suitable use. This case is a good example of the state exerting its authority to implement the PTD for the greater good.